

MT LEGISLATIVE HISTORY

Chapter 302 1967

Bill (H) 412 S _____ Original bill & hist. C

H. Committee on Public Health, Welfare & Safety S. Committee on Public Health, Welfare & Safety

Hearing Date(s) Feb 07 ☒ C

Hearing Date(s) Feb 22 ☒ C

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Date Out Feb 07 ☒ C

Feb 22 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

February 7, 1967

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE MINUTES

HJR 28, HB 439 and HB 505: Mr. Stuart M. Hall, of the American Legion, explained the proposed amendments to HB 439, and Mr. Shore spoke on behalf of HB 439 and 505. Witnesses were excused. Mr. White moved that HJR 28 "Do Pass". Motion seconded and carried. Mr. McCulloch moved that HB 439 "Do Not Pass"; motion seconded and passed. Mr. White moved that HB 505 "Do Pass, As Amended"; motion seconded and passed.

HB 233: The subcommittee on HB 233 reported back to the full committee, recommending that the bill be amended. Mr. Hall moved that HB 233 be amended, and then be reported out as "Do Pass, As Amended". Motion was seconded and carried.

HB 412: Mr. W. H. Bolkovatz, Helena attorney, representing the Montana Massage Association, spoke on behalf of the bill and offered a suggested amendment for Section 2, subsection (b); by striking out the words "either" and the words "or with appropriate apparatus" and also the words "heat lamps". Representative Elmer Schye appeared in support of the bill, and said that no particular fund was involved, and that if these people wanted to pay for the licensing and regulation of this occupation, he didn't see why they shouldn't be allowed to do so. Mr. Tom Reynolds, Billings, president of the Montana Chapter of the American Massage Association, gave a little of the background of the association and the approved schools involved, and urged passage of the act which would protect the public from a sanitation standpoint, and which would upgrade the occupation by eliminating those people who are not qualified. Dr. John W. McMahan, Helena physician, representing the Montana Medical Association, and the Lewis & Clark Medical Association, opposed the bill in the public health interest, and objected to the bill as giving professional status to the occupation whereas their schools have no medical supervision and the proposed standards are not subject to any recognized medical standards. Mr. Bolkovatz gave the rebuttal. Witnesses were excused.

Senate Bill 70: Senator Robert J. Rasmussen, principal sponsor for the bill, spoke for the bill, and introduced Dr. Lloyd Bowman, president of the State Board of Chiropractic Examiners of the State of Montana, who explained the purpose of the bill. Witnesses were excused. Mr. Cox moved that Senate Bill 70 "Do Pass"; motion seconded and passed.

Mr. Hall moved that House Bill 412 "Do Pass"; motion seconded and passed.

Mr. Hall moved that House Bill 24 "Do Pass"; motion seconded and passed.

House Bill 219: Section 7, line 15, page 8 of the original bill was amended as suggested by Mr. Hall by inserting after the word "compensation", the following: "when done in a private home, or". Mr. Hall then moved that House Bill 219 "As Amended, Do Pass"; motion was seconded and carried.

House Bill 450: Proponents -- Mr. Tom Clavin, President of Alpha Industries, Inc., stated that the bill would aid in building industry within the state with increased benefit to the state in the way of revenue. Representative Elmer Schye also spoke for the bill. Opponents -- Mr. William Scribner, attorney for the Montana Liquor Control Board, opposed the bill as a first step toward further granting of case lot discounts, and which would result in a loss of revenue to the state, and that the discount system would encourage dishonesty in the retail stores.

House Bill 487: Mr. William Scribner stated that the Montana Liquor Control Board is opposed to this bill since the state would suffer a considerable loss of revenue if it were passed. Witnesses were excused.

FACT SHEET ON HOUSE BILL NO. 412--Massage Licensing and Supervision

SPONSORS: Crum, Healey, Mehrens, and Nichols.

PURPOSES: The American Massage Association and the Montana Chapter have been organized for the past 23 years for the purpose of upgrading, educating, controlling, and policing the occupation of massage. This is being done through national and state bulletins and instruction, investigation and approval of massage training schools, and elimination from the occupation of persons who are unscrupulous or unprincipled, and particularly those untrained as masseurs.

These efforts have met with a degree of success, and they now have a close-knit and well-organized national and state organization of masseurs. However, there is a need for this legislation to give these organizations authority under the law, to take such further action as is necessary to protect the patron public.

APPROVED SCHOOLS. The national association as part of its activity investigates and publishes a list of approved schools for massage training. There are ten such approved schools. Constant effort is being made to enlarge and improve the course of instruction. The national organization has a program of educational seminars and study groups for each state chapter, requiring 24 hours of study each year.

The fees required for this act are reasonable, and the main purpose of the act is to regulate and license for the protection of the health and welfare of the public. It is not an attempt to monopolize an occupation, but its purpose is to eliminate unqualified, undesirable, unscrupulous, or unprincipled persons from the occupation.

The underlying principles are the same as those considered in passing similar acts concerning barbers and barbershops--to upgrade the occupation, sanitation, and the protection of the patron public.

MESSAGE CONTROL ACTS OF OTHER STATES. The following states have acts, similar to the provisions of this bill: Arkansas, Florida, Michigan, Minnesota, Nebraska, New York, North Dakota, Oregon and Wisconsin.

COST. FOW BORNE. The Board of Massage Examiners created by this act will be self-supporting through examination and license fees. All fees will be deposited in a special earmarked fund deposited with the State Treasurer, and expenditures made through the procedures in effect through the State Auditor's office.

MINUTES
PUBLIC HEALTH, WELFARE AND SAFETY COMMITTEE
STATE SENATE

February 22, 1967

The meeting of the Public Health, Welfare and Safety Committee was held in room 440, Wednesday, February 22, 1967, on adjournment. The meeting was called to order by the chairman and roll call was taken. A quorum was present.

HOUSE BILL 412 was the first bill that the Committee considered. Mr. Walter Bolkovatz, a practicing attorney and registered lobbyist was the first proponent for the bill. Stated that this was an act providing for the registration and licensing of a masseur and masseuse. Provides for examination and licensing. Purpose is that a masseur and masseuse should be regulated and licensed for the protection of the interest, health and welfare of the people of Montana; that it is necessary to authorize and provide authority to a state board of properly protect the patron public against improper unauthorized and unqualified masseurs and masseuse and to provide standards of sanitation and practice.

House Representatives Forrest Crum and John Healy, sponsors of the bill were very much in favor of the bill. Stated that this will not cost the state of Montana anything as they have their own fund. Other proponents for the bill who did not comment of the bill were Mr. and Mrs. Saunders, Klint Carrington, and Florence Dutton.

The bill was then acted upon. An amendment was brought up by Senator Hibbard dealing with the disposition of a special fund. He motioned that the bill be taken to the Legislative Council for amendment. The bill was then moved to be concurred as amended. Motion made by Senator Hilling and seconded by Senator Hibbard.

HOUSE BILL 219 which at the previous committee meeting had been placed into a sub committee was now considered. Senator Rasmussen gave the amendment that was drawn up by the subcommittee. He took the bill over to Judiciary and there was no objection. He then moved that the amendments be concurred in and the motion was seconded by Senator Swanz. The bill was then moved to be concurred in as amended. Motion was made by Senator Rasmussen and seconded by Senator Deschamps.

HOUSE BILL 8 was then given to the committee for their consideration. Senator Flynn read the amendments to this bill. This bill deals with the air pollution in Montana. The amendments were then motioned to be concurred in by Senator Deschamps and Senator Rasmussen. A roll call vote was taken on the amendments. The only two Senators that were no are Senator Swanz and Senator Hibbard.

(4) The report shall be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by such chief corporate officer.

Amendment of
articles of
incorporation.

Section 10. **Amendment of articles of incorporation.** Whenever any bishop, chief priest, or presiding elder shall have filed, in the office of the secretary of state, articles of incorporation, under the provisions of an act entitled "An act authorizing and regulating the incorporation of sole corporations and defining their powers," approved February 27, 1899, or amendments thereto, or under this act, such corporation sole may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this act; and such articles of amendment shall be promulgated by the incorporator or his successor by setting forth a statement of the facts authorizing such amendment and the date upon which said amendment was promulgated and his affidavit that the same is a true copy or translation thereof shall be deemed a sufficient attestation thereof.

Unauthorized
assumption of
corporate powers.

Section 11. **Unauthorized assumption of corporate powers.** All persons who assume to act as a corporation hereunder without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as the result thereof.

Effect of repeal
of prior acts.

Section 12. **Effect of repeal of prior acts.** The repeal of a prior act by this act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof.

Severability act.

Section 13. **Effect of invalidity of part of this act.** If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this act so adjudged to be invalid or unconstitutional.

Repealing clause.

Section 14. **Repeal of prior acts.** Sections 15-1501, 15-1502, 15-1503, 15-1504, 15-1505, 15-1506, 15-1507, Re-

vised Codes of Montana, 1947, and all other acts or parts of acts in conflict herewith are hereby repealed.

Section 15. This act shall be effective on December 31, 1968.

Approved: March 2, 1967.

Effective
December 31, 1968.

CHAPTER 302

An Act Providing for the Regulation and Licensing of the Occupation of Massage; Creating a Board, Providing Qualifications, Powers, Duties, and Compensation; Providing for Examination and Licensing, Disposition of Receipts and Disbursements, and a Penalty for Violation, and Other Requirements.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. **Purpose of act.** It is hereby declared, as a matter of legislative policy in the state of Montana, that the occupation of masseur and masseuse should be regulated and licensed for the protection of the interest, health, and welfare of the people of Montana; that it is necessary to authorize and provide authority to a state board to properly protect the patron public against improper, unauthorized and unqualified masseurs and masseuses and to provide standards of sanitation and practice.

Regulation of
occupation of
massage.

Section 2. Definitions.

Definitions

a. The term masseur shall include all persons engaged in the occupation of massage and the masculine gender includes the feminine "masseuse".

"Masseur."

b. Massage shall mean the trained ability of body massage by hands for the purpose of body massage, the use of oil rubs, salt glows, hot and cold packs, tub, shower or cabinet baths; which includes the application to the patron by the operator's hands by variations of touch, stroking, friction, kneading, vibration, percussion, and gymnastics.

"Massage."

c. Massage establishment as used in this act shall mean any place wherein all or any or more of the above defined procedures and methods are administered or used.

"Massage
establishment."

d. The term board as used in this act shall mean the Montana board of massage examiners.

"Board."

State board of
massage examiners
—qualifications
and appointment.

Section 3. State board of massage examiners—qualifications and appointment. There is hereby created and established a board to be known as the state board of massage examiners, and said board shall be composed of three (3) practicing masseurs of integrity and ability, who shall be residents of the state of Montana, and who shall have been engaged in the occupation of massage continuously in the state of Montana for a period of at least one (1) year. The governor of the state of Montana shall appoint three (3) masseurs, who shall possess the necessary qualifications, to constitute the members of said board, the term of office of one (1) to expire in one (1) year, one (1) in two (2) years, and one (1) in three (3) years from the date of appointment. Annually thereafter, the governor shall appoint one (1) licensed masseur engaged in such occupation and possessed of the qualifications herein set forth, to serve for a period of three (3) years, and shall fill all vacancies in said board caused by death or otherwise as soon as practicable.

Organization
of board—
meetings—powers
and duties.

Section 4. Organization of board—meetings—powers and duties. The board of massage examiners shall convene within thirty (30) days after their appointment and elect, and thereafter annually elect, a president, a vice-president, and a secretary-treasurer from their membership.

The board shall hold a regular meeting on the 2nd Friday of January in each year, at the city of Helena, Montana, and shall hold special meetings at such times and places as the board, or a majority of the membership thereof, may designate; provided, that not more than four (4) meetings shall be held in any one (1) year. A majority of the board shall constitute a quorum.

The board shall have authority to administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to all licenses issued by them, and shall from time to time adopt such rules and regulations as they deem proper and necessary for the performance of their duties, and they shall adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this law, which shall be without prejudice, partiality, or discrimination as to the different schools of massage training. The secretary of said board

shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

A license to engage as a masseur within this state shall be issued to the individual members of said board at the first meeting of said board upon payment of the regular fee as provided for in this act.

Section 5. Practicing without a license—license without examination. It shall be unlawful for any person to engage in the occupation of massage in this state without first obtaining a license as provided in this act. All persons engaged in the occupation of massage within this state for three (3) months prior to the passage of this law who have completed a course in massage and shall accompany said application with satisfactory evidence of good character and reputation may be licensed without further examination.

Practicing without
a license—
license without
examination.

When application for examination for license is regularly filed with the board, as provided in this act, the board may issue to the applicant a temporary permit to engage in the occupation of massage, which certificate shall be good until the next meeting of the board.

Section 6. Application and fees for license. Any person wishing to engage in the occupation of a masseur in this state after August 1, 1967, except those licensed under section 5 of this act, shall make application to said board of massage examiners through the secretary-treasurer thereof, and upon such form and such manner as may be prescribed and directed by the board, at least fifteen (15) days prior to any meeting of said board. Each applicant shall hold a diploma or credentials issued by a recognized, approved school of massage or like institution, certifying not less than one thousand (1,000) hours of study satisfactory to said school. Application shall be made in writing and shall be sworn to by some officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied massage, from what school he holds a certificate, and the length of time he has engaged in the occupation of massage, accompanying the same with proof thereof by a diploma or certificate and shall accompany said application with satisfactory evidence of good character and reputation.

Application and
fees for license.

There shall be paid to the secretary-treasurer of the state board of massage examiners, by each applicant for a license, a fee of thirty-five dollars (\$35) which shall accompany the application. Any applicant failing to pass said requirements shall be entitled within six (6) months to a reexamination upon payment of an additional fee of ten dollars (\$10) but upon a third failure may not reapply.

Examinations.

Section 7. **Examinations.** Examinations for licenses to engage in the occupation of massage shall be made by the board according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications.

All examinations shall be made in writing, and in addition each applicant shall pass a reasonable demonstrative and oral examination, conducted by and under the supervision and direction of said board. Minimum requirements shall be a general average in said examination of seventy-five percent (75%) in all subjects involved and not less than fifty percent (50%) in any one (1) subject. In addition to such subjects as may be designated by the board, the examination shall include principles of sanitation and hygiene.

Refusal or revocation of license.

Section 8. **Refusal or revocation of license.** The state board of massage examiners may, after due hearing, refuse to grant, revoke or renew any license provided for in this act to a person, otherwise qualified, who obtained said license by fraudulent representation, for incompetency in practice, for use of untruthful or improbable statements to patrons or in his advertisements, for habitual intoxication or for unprofessional and immoral conduct, but said board may reissue a license after a lapse of not less than six (6) months, if in its judgment such act or acts and/or conditions of disqualification shall have been remedied. It shall be a violation of this act for any person engaged in the occupation of a masseur to advertise or assert as a licensee under this act that they diagnose or treat any disease, injury or illness.

Renewal of license.

Section 9. **Renewal of license.** Each license shall expire on the last day of December in each year and shall be renewed then or thereafter, by the board, upon payment of a renewal fee of not less than ten dollars (\$10)

or more than twenty-five dollars (\$25) as set by the state board of massage examiners.

Section 10. **Disposition of fees—receipts and disbursements.** All examination and renewal fees received by the state board of massage examiners under this act shall be paid to the secretary-treasurer of said board, who shall at the end of each month deposit the same with the state treasurer, and the state treasurer shall place all money so received in an account in the earmarked revenue fund to the credit of the state board of massage examiners and shall pay the same out in warrants drawn by the state auditor, upon approved vouchers issued and signed by the president and secretary-treasurer of said board. All money so received and placed in said fund may be used by the state board of massage examiners in defraying their expenses in carrying out the provisions of this act.

Disposition of fees—receipts and disbursements.

The secretary-treasurer shall keep a true and accurate account of all funds received and all vouchers issued by the board; and on the first day of December of each year, shall file with the governor of the state a report of all receipts and disbursements and the proceedings of said board for the fiscal year.

The members of said board shall receive a per diem of fifteen dollars (\$15) for each day during which they shall be actually engaged in the discharge of their duties, and mileage at the rate of ten cents (10¢) per mile for each mile necessarily travelled in going to and from any meeting of said board.

Per diem and mileage and all other expenses necessarily connected with said board shall be paid only out of the earmarked revenue fund of the state board of massage examiners.

Section 11. **Bond of treasurer—dismissal of members of the board.** The treasurer of said board shall give bond in such sum and with such sureties as the board may deem proper. Upon sufficient proof to the governor of the inability or misconduct of a member of the board, said member shall be dismissed, and the governor shall appoint as his successor some licensed masseur of this state.

Bond of treasurer—dismissal of members of the board.

Section 12. **Admission to practice of persons from other states.** Persons licensed to engage in the occupation of a masseur under the laws of any other state having equal requirements to this act, may, in the discretion of

Admission to practice of persons from other states.

the board, be issued a license to engage in the occupation of a masseur in this state without examination, upon payment of the fee of thirty-five dollars (\$35) as herein provided.

Violation
and penalty.

Section 13. **Penalty for violation of this act.** Any person who shall engage in the practice of body massage as a masseur, or shall accept compensation for performing body massage as a masseur, without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred dollars (\$200) or more than five hundred dollars (\$500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

Exemptions.

Section 14. **Exemptions.** The following classes of persons are exempt from this act:

1. Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic or chiropody.

2. Persons who are registered or licensed under the laws of this state as nurses, practical nurses, physical therapists, barbers or cosmetologists.

3. Schools, Y.M.C.A. clubs, athletic clubs, and similar organizations who furnish massage to their players and members.

Approved: March 2, 1967.

CHAPTER 303

An Act Amending Section 93-4304, R.C.M. 1947, As Amended, to Provide that in Actions Involving Attachment in Which the Plaintiff's Claim Shall Exceed One Thousand Dollars (\$1,000) That the Maximum Undertaking Required Shall Not Exceed Twenty Thousand Dollars (\$20,000).

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-4304, R.C.M. 1947, as amended is hereby amended to read as follows:

Amending clause.

"93-4304. **Undertaking.** Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with two (2) or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars (\$1,000) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand dollars (\$1,000), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of *twenty thousand dollars (\$20,000)*. The condition of such undertaking shall be to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. At any time within thirty (30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) days nor more than ten (10) days, must justify before a judge of the district court, or before the clerk thereof, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment."

Undertaking on
attachment shall
not exceed
\$20,000.

Approved: March 2, 1967.

CHAPTER 304

An Act Authorizing the Supreme Court of the State of Montana to Supervise and Control the Publication, Contents, Form and Substance of all Supplements and Replacement Volumes of the Revised Codes of Montana of 1947; and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The supreme court of the state of Montana is hereby authorized and directed to supervise and control the publication of all supplements to the Revised Codes of Montana of 1947, as to form, and to determine from

Supreme court
to supervise
publication of
supplements
to R. C. M. 1947.